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Supreme Court of the United States

No. 333

CHARLES COLLE,

Petitioner,

vs.

UNITED STATES OF AMERICA.

PETITION FOR WRIT OF CERTIORARI

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Miami 32, Florida

Supreme Court of the United States

No. _____

CHARLES COLLE,

Petitioner,

vs.

UNITED STATES OF AMERICA.

PETITION FOR WRIT OF CERTIORARI

TO: HONORABLE CHIEF JUSTICE & JUSTICES
Supreme Court of the United States of America

PETITION AND GROUNDS

COMES NOW CHARLES COLLE, by and through his undersigned attorney, and respectfully petitions this Honorable Court to direct the issuance of its Writ of Certiorari directed to the Court of Appeals for the Fifth Circuit at New Orleans, Louisiana, and as grounds for said Petition would respectfully submit:

1. The Trial Court did not give the Defendant a fair and impartial trial as required by the laws of the United States.

2. The Court erred in denying the Appellant's Motion for Judgment of Acquittal at the conclusion of the Government's case in chief.

3. The Court erred in requiring the Defendant to take the stand.

4. The Court erred in permitting an extensive cross-examination of the Defendant over the objection of counsel for the Defendant, which went far beyond the scope of direct examination.

5. The Court erred in its extensive interrogation and cross-examination of the Defendant so as to prejudice the rights of the Defendant to a fair and impartial trial.

SUMMARY OF MATTER INVOLVED

Your Petitioner was indicted with six (6) other persons on the 4th day of June, A. D., 1959, in an Indictment charging conspiracy to violate Title 22, Section 1934(a) and Title 18, Section 201 of the UNITED STATES CODE in violation of Title 18, UNITED STATES CODE, Section 371. The Defendant was tried before the Honorable WILLIAM C. MATHES, United States District Judge for the Southern District of California, sitting by designation at Miami in the Southern District of Florida, on the 29th day of February, 1960, and thereafter. The Court found the Defendant guilty and sentenced him to three (3) years in prison; the Defendant appealed to the United States Court of Appeals for the Fifth Circuit, the conviction was affirmed per curiam by Order dated November 9, 1960; and a Petition for Re-Hearing was thereafter denied per curiam by Order dated July 19, 1961.

JURISDICTION OF THIS COURT

It is respectfully submitted that this Court has jurisdiction of this cause by virtue of Rule 37(c) of the FED-

ERAL RULES OF CRIMINAL PROCEDURE and Title 18, UNITED STATES CODE, Section 3772, in that it is the contention of your Petitioner, Defendant below, that he was not granted a fair and impartial Trial as guaranteed to him by the Sixth Amendment to the CONSTITUTION OF THE UNITED STATES.

QUESTION PRESENTED

Was the Defendant afforded a fair and impartial Trial as guaranteed to him by the Sixth Amendment to the CONSTITUTION OF THE UNITED STATES?

REASONS FOR GRANTING PETITION FOR WRIT OF CERTIORARI

It is respectfully submitted that the Defendant was not afforded a fair and impartial Trial as guaranteed to him by the Sixth Amendment to the CONSTITUTION OF THE UNITED STATES. The Court's attention is directed to pages 247 through 252, inclusive, of the Record in this cause relating to introduction of evidence illegally and improperly seized, as well as the improper coercion by the Trial Court in practically requiring the Defendant to take the stand in direct violation of the CONSTITUTION OF THE UNITED STATES in that the Court said at page 252 of the Record:

> "I want the record to show the Defendant may take the stand now in support of his motion without testifying generally to the case if he wishes to do so. I will hear the motion now, if you want to offer anything in support of the motion; that is, a motion to suppress Exhibits 4

and 5 for Identification, the rifle and so-called machine - - "

It is respectfully submitted that this is a direct violation of the Fifth Amendment to the CONSTITUTION OF THE UNITED STATES.

Attention is also called to the article in ARGOSY Magazine for January 1960, written by Robert Seaver and Leonard Marr, and titled "Miami - - Revolutions C. O. D.". It is well to here note that this article which follows closely the evidence offered at the time of Trial was published some month or two prior to the Defendant's Trial and was so specific that the names of the Customs Agents and other Defendants were given.

CONCLUSION

For the reasons set forth herein it is respectfully urged that your Petitioner, the Defendant below was not afforded a fair and impartial Trial as guaranteed to him by the CONSTITUTION OF THE UNITED STATES; that his constitutional rights and privileges have been grossly violated, resulting in his conviction.

WHEREFORE, your Petitioner respectfully prays this Honorable Court to direct the issuance of its Writ of Certiorari directed to the United States Court of Appeals for the Fifth Circuit.

Respectfully submitted,

_____

O. B. CLINE, JR.
Counsel for Petitioner

CERTIFICATION OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the above and foregoing was this day of August, A.D., 1961, mailed to the SOLICITOR GENERAL, Department of Justice, Washington 25, D.C.

O. B. CLINE, JR.

Statutes involved:

Title 22, USC, §1934(a): Munitions control—Authority of President

(a) The President is authorized to control, in furtherance of world peace and the security and foreign policy of the United States, the export and import of arms, ammunition, and implements of war, including technical data relating thereto, other than by a United States Government agency. The President is authorized to designate those articles which shall be considered as arms, ammunition, and implements of war, including technical data relating thereto, for the purposes of this section.

Title 18, USC, §201: Offer to officer or other person

Whoever promises, offers, or gives any money or thing of value, or makes or tenders any check, order, contract, undertaking, obligation, gratuity, or security for the payment of money or for the delivery or conveyance of anything of value, to any officer or employee or person acting for or on behalf of the United States, or any department or agency thereof, in any official function, under or by authority of any such department or agency or to any officer or person acting for or on behalf of either House of Congress, or of any committee of either House, or both Houses thereof, with intent to influence his decision or action on any question, matter, cause, or proceeding which may at any time

be pending, or which may by law be brought before him in his official capacity, or in his place of trust or profit, or with intent to influence him to commit or aid in committing, or to collude in, or allow, any fraud, or make opportunity for the commission of any fraud, on the United States, or to induce him to do or omit to do any act in violation of his lawful duty, shall be fined not more than three times the amount of such money or value of such thing or imprisoned not more than three years, or both.

Title 18, USC, §371: Conspiracy to commit offense or to defraud United States

If two or more persons conspire either to commit any offense against the United States, or to defraud the United States, or any agency thereof in any manner or for any purpose, and one or more of such persons do any act to effect the object of the conspiracy, each shall be fined not more than $10,000 or imprisoned not more than five years, or both.

If, however, the offense, the commission of which is the object of the conspiracy, is a misdemeanor only, the punishment for such conspiracy shall not exceed the maximum punishment provided for such misdemeanor.

Constitutional Provisions:

Amendment V: Capital Crimes; Due Process

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment

or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

Amendment VI: Jury Trial for Crimes, and Procedural Rights

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining Witnesses in his favor, and to have the Assistance of Counsel for his defence.

Appellate Decisions:

IN THE

UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

NO. 18,260

CHARLES COLLE,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

Appeal from the Unted States Dstrct Court for the Southern District of Florida.

(November 9, 1960.)

Before RIVES, Chief Judge, and TUTTLE and WISDOM, Circuit Judges.

PER CURIAM: This is an appeal from a conviction of appeliant for conspiring to bribe a federal government officer, and to export arms and ammunition without a license. The alleged bribery related to the exportation of the arms. Appellant's principal contention here is that

there was insufficient evidence to connect him with the conspiracy, and that, therefore, knowledge of others charged with him could not legally be imputed to him.

We think the record amply supports the jury's verdict on all points. Appellant's criticism of the extensive participation by the trial judge in the conduct of the trial does not disclose any prejudice resulting from the questioning of witnesses by the judge. It is not contended that such interrogation was carried on in a manner that would in any way discredit the defendant or his counsel.

There being no prejudicial error in the conduct of the trial, the Judgment is AFFIRMED.

IN THE

UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

NO. 18,260

CHARLES COLLE,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

Appeal from the United States District Court for the Southern District of Florida.

(July 19, 1961)

ON PETITION FOR REHEARING

Before TUTTLE, Chief Judge, and RIVES and WISDOM, Circuit Judges.

PER CURIAM: Appellant contends that in our disposition of this appeal we failed to indicate that he contends was his principal grounds of appeal; that is that the court in some manner required the defendant to take the witness stand before the court would consider the exclusion of certain evidence offered by the Government. We

have carefully considered this ground of appeal and find that the trial court, who tried the case without a jury by consent of the parties, permitted the defendant to take the stand to testify on the issue of the legality of a seizure of the property tendered in evidence by the Government. The examination of the Defendant in this connection was relevant to the issue on which the Defendant sought to give testimony.

In our opinion we referred to "the jury's verdict." The opinion is modified to strike the words "the jury's verdict," and to substitute in lieu thereof the word "judgment."

As thus modified the motion for rehearing is

DENIED.

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No. 333

FILED
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JAMES R. BROWNING, Clerk

In the Supreme Court of the United States

OCTOBER TERM, 1961

CHARLES COLLE, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

ARCHIBALD COX,
Solicitor General,

HERBERT J. MILLER, JR.,
Assistant Attorney General,

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In the Supreme Court of the United States

OCTOBER TERM, 1961

No. 333

CHARLES COLLE, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINION BELOW

The per curiam opinions of the court of appeals (Pet. App. 4, 6) are not reported.

JURISDICTION

The judgment of the court of appeals was entered on November 9, 1960. A petition for a rehearing was denied (with an opinion) on July 19, 1961 (Pet. App. 6). The petition for a writ of certiorari was

filed on August 18, 1961. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTIONS PRESENTED

1. Whether the evidence was sufficient to support the conviction.

2. Whether the trial court erred in permitting petitioner to testify for the limited purpose of supporting a motion to suppress, and in questioning him with respect to his testimony on that issue.

STATEMENT

Petitioner and six others were indicted in the United States District Court for the Southern District of Florida for conspiring to export munitions of war without a license, in violation of 22 U.S.C. 1934, and to bribe a federal officer, in violation of 18 U.S.C. 201 (R. 2-5). After a waiver of trial by jury, petitioner was tried and found guilty by the court (R. 10, 294-295). He was sentenced to imprisonment for three years (R. 11-12). The court of appeals affirmed *per curiam*.

1. The government's principal evidence consisted of the testimony of Liquori, a co-conspirator, and Shanley, a federal customs agent who had accepted money from the conspirators, pretending to cooperate with their plan surreptitiously to ship arms to the Dominican Republic.

In the early months of 1959, Liquori, a Miami policeman assigned to guard the Dominican Consulate in Miami, agreed with Dominican officials to procure

arms for shipment to their country. Together with Leonard Trento, whom he had met through the Dominican consul, Liquori sought United States clearance to ship the arms. When such clearance was denied, Liquori and the consul decided to go ahead with the shipment in any event (R. 169-174). To accomplish this purpose, Trento and another sought to make a "deal" with Shanley, a local federal customs agent (R. 25-35, 177).

In late March 1959, Liquori gave Trento a deposit of $1,000 and then met him in New York, where Trento said he could get arms. The following day, Trento set out, without Liquori, to get in touch with petitioner, an arms dealer in New Jersey. Liquori gave Trento $13,000 to buy 100 machine guns which Trento said he would purchase from petitioner (R. 174-180). During the first week of April, Trento delivered to Liquori, in Miami, 25 machine guns which were stored in the garage at the Dominican consulate (R. 180-181).

On April 15th, petitioner, in Miami, appeared at the Dominican consulate, introduced himself to Liquori and the Dominican consul, and told him that he wanted more money to continue the purchase of arms, explaining that he had put a deposit on ammunition in California. The consul gave $9,000 to Liquori who gave it to Trento who, in turn, after deducting expenses and other fees, paid petitioner $7,600 (R. 181-183).

In the meantime, two local customs agents, Shanley and another, had ostensibly agreed to help Trento and his associates get the munitions out of the coun-

try. It was understood that the agents were to have complete control of shipments arriving in Miami and that they were to receive twenty percent of the value of munitions exported under their "protection" (R. 32-35). On May 6th, the agents, upon the insistence of Liquori, accepted $200 each, as a regular monthly retainer (R. 36).

On May 7th, Shanley and his fellow agent who had heard petitioner's name mentioned as an arms supplier (R. 36) discovered eight boxes on the premises of the Miami airport, all bearing petitioner's name as sender. Two of the boxes were addressed to Liquori and six to petitioner. The agents, keeping the boxes under surveillance, saw Trento and Liquori pick up two of the boxes. Two hours later, petitioner appeared, markedly nervous, and had the remaining six boxes loaded in a truck driven by Trento. The agents followed the truck on a devious route through the city. After petitioner had left the truck, the agents stopped it. Trento explained to Shanley that the failure to notify him of this shipment had been a "slip-up". The agents took the boxes, which contained 21 sub-machine guns, 37 rifles, and various replacement parts, to Shanley's garage (R. 42 47, 52). Later that afternoon, petitioner appeared at Shanley's house and accused him of hijacking his legal shipment (R. 47-53).

The following day, petitioner, who had registered at a Miami hotel under an assumed name, met with Shanley to have a friendly discussion (R. 54). At this time, petitioner told Shanley that he now understood everything that was involved (R. 83), that the

plan suited him fine, and that he wanted to cooperate (R. 54-55).

During subsequent meetings, held frequently over the next few days with Shanley and others, petitioner spoke about the truck of ammunition he was momentarily expecting from California, future shipments, and the destination of the arms (R. 56-67, 83). Shortly thereafter, petitioner told Shanley that he could not wait in Miami for the truck from California but that he was leaving money for freight charges and had arranged for the freight to be released to Trento (R. 66, 72). On May 18th, Trento cashed petitioner's check for $840 at the Dominican consulate. In a rented truck, Trento and Shanley drove to a trucking depot where they picked up 116 cases containing 200,000 rounds of ammunition which had been purchased by petitioner (R. 72-73, 187-188). The following day, the Dominican consul paid Shanley and his fellow agent $1,000 (R. 75).

During the following days, Shanley discussed with Trento, Liquori, and others a plan for getting the munitions out of the country by aircraft (R. 77-78). On May 22nd, as the arms were being loaded on a plane at Miami's airport, other customs agents arrested Trento, Liquori, and others (R. 78, 79). Petitioner was subsequently arrested.

2. When the government, at the close of its case, offered its various exhibits for admission into evidence, petitioner objected to the admission of a list of, and samples of, the rifles and machine guns which agent Shanley had taken, on May 7, 1959, from the truck driven by Trento. He asserted that

the weapons had been seized unlawfully, not pursuant to a warrant or incident to a legal arrest (R. 247-248). The court reminded defense counsel that petitioner, in order to have standing to object to the seizure of the guns, must have had some interest in the property (R. 250). Asked if any balance was due to petitioner on the shipment, defense counsel replied in the negative but argued that the procurement of guns and the ammunition later coming into Miami from California was part of the whole transaction upon which a balance was due (R. 251). Thereupon the court asked if the defense would want to offer evidence on this. Defense counsel replied in the negative, saying that he thought there was sufficient evidence to sustain the motion (R. 252). The court continued (R. 252-253):

> I want the record to show the defendant may take the stand now in support of his motion without testifying generally to the case if he wishes to do so. I will hear the motion now, if you want to offer anything in support * * *
>
> * * * *
>
> Do you wish to offer evidence at this time?

Defense counsel replied in the affirmative (R. 253).

Thereafter petitioner testified that he had brought into Miami, as one transaction, the cases of guns arriving on May 7th and the truck load of ammunition arriving subsequently, and that a balance was due on the total transaction (R. 253-254). When, on cross-examination, petitioner made vague statements as to his monetary transactions (R. 259), the court took over the questioning to ask for precise figures as to prices, receipts, balances, deposits, and

expenses incurred in the purchase and sale of the arms (R. 259-270). The court also asked petitioner about the delivery of the guns. After petitioner admitted that he had turned over possession of the guns to Trento before they were taken by Shanley (R. 271-282), the court denied the motion to exclude the evidence (R. 282).

ARGUMENT

1. There is plainly no merit in petitioner's contention that the court erred in denying his motion for a judgment of acquittal at the conclusion of the government's case. The evidence indisputably showed the existence of a conspiracy to ship arms to a foreign country in knowing violation of law, as well as a conspiracy to bribe customs agents. The testimony of agent Shanley and conspirator Liquori conclusively established petitioner as the supplier of the arms. That petitioner knew of the destination of the munitions (and the illegality of the plan) was shown by the testimony as to his numerous conversations with the conspirators, and by his appearance at the Dominican consulate where he collected over $7,000 (*supra*, p. 3, 4-5).

2. The obvious answer to petitioner's contention that the court erred in requiring him to take the stand is that the court did not require him to do so. Rather, the court permitted him to take the stand, if he chose to do so, with the privilege of not testifying generally, but only in support of his belated motion to suppress. Defense counsel specifically indi-

cated that petitioner wished to offer evidence on this motion, and petitioner's subsequent testimony was voluntarily given.

The court's questioning of petitioner at this time went only to the issue which his motion to suppress raised and upon which his direct testimony on that motion did not throw sufficient light—that is, whether he had sufficient interest in the guns to have standing to object to their seizure. The questions were limited to inquiries regarding the delivery of the guns and the financial arrangements for the sale of these guns and the ammunition which petitioner had testified were part of one transaction. These inquiries were proper on the issue of standing, and petitioner has no cause for complaint.

3. Petitioner's allusion in his petition in this Court (Pet. 4) to a magazine article, purportedly describing the government's evidence prior to trial, needs little comment. It does not appear that the matter was ever urged at the trial; and it was not urged below. Petitioner does not now aver in what way he could have been prejudiced; he does not even assert that the trial court, which adjudicated his guilt, was ever aware of the article.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the petition for a writ of certiorari should be denied.

ARCHIBALD COX
Solicitor General.

HERBERT J. MILLER, JR.,
Assistant Attorney General.

BEATRICE ROSENBERG,
JULIA P. COOPER,
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September 1961

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